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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,764	05/14/2001	Carlos A. Hoyos		8884

7590 11/10/2005

Michael Cohen  
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EXAMINER

MISLEH, JUSTIN P

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/854,764

Applicant(s)

HOYOS, CARLOS A.

Examiner

Justin P. Misleh

Art Unit

2612

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 - 48.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attached Correspondence.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The amendments to independent Claims 19 and 34 require further consideration and search.

A handwritten signature in black ink, appearing to read 'Ngoc-Yen Vu', is positioned above the printed name and title.

NGOC-YEN VU  
PRIMARY EXAMINER

*Response to Arguments*

1. Applicant's arguments filed October 11, 2005 have been fully considered but they are not persuasive.

2. With respect to Claim 1, Applicant mainly argues, "There is no motivation for an addition of the third orthogonal axis to provide a 'greater degree movement,' because one of ordinary skill in the art (of surveying) would not require a such an addition since the art of surveying does not require this added third degree of freedom. Surveying merely requires a horizontal and/or vertical freedom, as is clearly taught in Viney (column 5, line 1). Furthermore, the platform of Viney is already stable on a tripod. Therefore, it is not understood why at the time the invention was made, one with ordinary skill in the art would have been motivated to include an imaging platform that is capable of controllable motion about three orthogonal axis, as purportedly taught by Tyler, in the remote control imaging system, as purportedly disclosed by Viney, as a means 'to provide a gyroscopically stable imaging platform with a greater degree movement.'"

3. The Examiner respectfully disagrees with Applicant's position. Viney is directed towards a "method and apparatus for controlling a total station to locate a target" (see column 1, lines 6 – 8). Furthermore, Viney expressly states "[o]ne problem associated with many robotic total stations is that they tend to have difficulty locating the target ... [c]onsequently, with many robotic total stations, the user at the target frequently must return to the total station to make fine tuning adjustments" (see column 1, lines 40 – 45). Finally, Viney concludes, "what is needed is a total station ... which can not only be operated by a single user, but also provides the user with greater freedom of movement" (see column, lines 53 – 58). In an analogous art, Tyler also is

Art Unit: 2612

directed towards “aiming an instrument at a target object” (see column, lines 9 and 10).

Furthermore, Tyler indicates the improvement over the prior art lies within providing a

“gyroscopically stabilized apparatus ... for aiming a camera ... at a target object” (see column 1,

lines 62 – 66). Finally, Tyler concludes, “the present apparatus thus provides greatly increased

freedom of... movement” (see column 2, lines 45 – 47). It clear based upon the statements by

Viney that there is need to provide the total station incorporating a camera with the capability of

accurately acquiring and targeting an object, including making fine tuning adjustments, while

simultaneously reducing user involvement. Albeit, it also clear based upon the statements by

Tyler that there is also need to provide a surveillance (target-tracking) platform also

incorporating a camera with greater freedom of movement while simultaneously gyroscopically

stabilizing the platform. Hence, the greater freedom of movement and stabilizing teachings of

Tyler would ONLY improve upon the total station disclosed by Viney. Thus, a total station

incorporating a camera that is provided with a greater freedom of movement and that is

gyroscopically stabilized would definitely result in additional capability by allowing fine tuning

adjustments and would definitely reduce user involvement.

4. Additionally, Applicant makes several arguments regarding the structural combination of

Viney and Tyler. One particular argument is, “it is respectfully submitted that the Final Office

Action is not merely suggesting a minor, obvious modification to Viney patent to make a

hypothetical ‘gyroscopically stable surveying machine,’ but this modification requires the

replacement of several major components of both references, including internal and external

structural changes that are not taught or suggested (implied or otherwise) by either reference.”

Another particular argument is, “hypothetically, the total station 1 of Viney in combination with

Art Unit: 2612

Tyler would supposedly have the capability to move in the third orthogonal axis, but Viney remote RCVU would not be able to move the total station 1 in that third axis.”

5. In response to Applicant argument’s regarding the structural combination of Viney and Tyler, Applicant is reminded, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the above response, the Examiner has demonstrated what the combined teachings would have suggested to those of ordinary skill in the art.

6. Finally, the Examiner has successfully traversed Applicant’s arguments in regards to independent Claim 1; thus, Applicant’s arguments with regard to dependent Claims 4, 8, 10, 11, 15, 16, 17 are now moot.

  
NGOC-YEN VU  
PRIMARY EXAMINER